

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
	)	
<b>JAMES R. WARREN</b>	)	
	)	
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC07-0151</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

James R. Warren (hereinafter "Respondent Warren") is an owner/developer of the property described as Northside Park Development, located on a 32.50 acre tract, map

078, parcel 011.07 in Shelbyville, TN (hereinafter “the site”). Service of process may be made on Respondent Warren at P.O. Box 228, Shelbyville, Tennessee 37162.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined at T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

## V.

The unnamed tributary to Little Hurricane Creek is referred to herein, as “waters of the state,” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications For Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, the unnamed tributary to Little Hurricane Creek have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## VI.

T.C.A. §69-3-108 requires a person to obtain coverage under permit prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), Storm Water Pollution Prevention Plan (SWPPP) and the associated fee.

## FACTS

## VII.

On May 15, 2007, the division received an inquiry from the City of Shelbyville Public Works Department about clearing taking place at the site. On May 17, 2007, division personnel conducted an investigation at the site and observed that filling and

grading activities exceeding one acre were taking place. Division personnel noted that a “stop work order” to Respondent Warren had been issued by the City of Shelbyville on May 17, 2007. Upon further investigation, it was determined that the construction activities occurring at the site were not covered under the TNCGP.

#### **VIII.**

On May 24, 2007, the City of Shelbyville Codes Department personnel visited the site and found that additional material had been dumped on the site since the stop work order was issued. On May 25, 2007, the division issued a Notice of Violation (NOV) to Respondent Warren for not obtaining coverage under the TNCGP. Further, the NOV notified the Respondent that a NOI, SWPPP, and associated fee must be submitted to the division to obtain coverage under the TNCGP for activities at the site.

#### **IX.**

On June 1, 2007, the City of Shelbyville Codes Department personnel visited the site and found that additional work had been conducted since the May 24, 2007, site visit.

#### **X.**

On June 4, 2007, division personnel visited the site and found the site to be inactive. One row of silt fence had been installed on a portion of the property. On June 20, 2007, division personnel visited the site, the condition of which appeared to be unchanged, albeit still bare and without adequate Erosion Prevention and Sediment Control (EPSC) measures to protect the unnamed tributary to Little Hurricane Creek. As

of July 3, 2007, Respondent Warren has not submitted a NOI, SWPPP, and the associated fee to obtain coverage under the TNCGP for activities at the site.

## **VIOLATIONS**

### **XI.**

By conducting construction activities without authorization under the TNCGP, the Respondent has violated T.C.A. §§69-3-108(b) and 69-3-114(b), which state:

T.C.A. §69-3-108:

(b.) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state; [...]
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized; [...]
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

## **ORDER AND ASSESSMENT**

### **XII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within FOURTEEN (14) DAYS of receipt of this Order, submit a complete NOI, SWPPP and the associated fee to the manager of the Columbia Environmental Field Office (EFOCL), located at 2484 Park Plus Drive, Columbia, Tennessee 38401.
2. The Respondent shall, within FOURTEEN (14) DAYS of receipt of this Order, implement appropriate EPSC measures designed by a professional engineer or other qualified professional to assure that no material leaves the site and enters waters of the state. The Respondent shall provide written notification of completion to the manager of the EFOCL located at the address referenced above.
3. The Respondent shall maintain appropriate professionally designed EPSC measures to ensure that no material leaves the site and enters waters of the state. These professionally designed controls shall be maintained until project completion.
4. The Respondent shall, by August 31, 2008, attend a Fundamentals of Erosion Prevention and Sediment Control Workshop provided by the department and submit documentation of successful completion to the manager of the division's EFOCL located at the address referenced above. A copy shall also

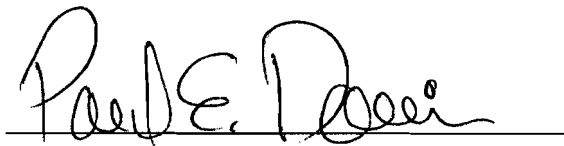
be submitted to the manager of the division's Enforcement and Compliance Section located at 401 Church Street, L&C Annex-6<sup>th</sup> Floor, Nashville, Tennessee 37243.

5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of FOURTY ONE THOUSAND DOLLARS (\$41,000.00).
  - a. The Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
  - b. The Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
  - c. The Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
  - d. The Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.
  - e. The Respondent shall pay ONE THOUSAND DOLLARS (\$1,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fail to comply with Item 4 above in a timely manner.
6. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent are advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order.

To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 9<sup>th</sup> day of July, 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109 and 69-3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, at the address above. Please write your case number on all payments and all correspondence concerning this matter.